



# Community Based Sentences (Interstate Transfer) Bill 2019

Report No. 51, 56<sup>th</sup> Parliament  
Legal Affairs and Community Safety Committee  
October 2019

## **Legal Affairs and Community Safety Committee**

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### **Acknowledgements**

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## Contents

<b>Abbreviations</b>	<b>ii</b>
<b>Chair’s foreword</b>	<b>iii</b>
<b>Recommendation</b>	<b>iv</b>
<b>1 Introduction</b>	<b>1</b>
1.1 Role of the committee	1
1.2 Inquiry process	1
1.3 Policy objectives of the Bill	1
1.4 Government consultation on the Bill	1
1.5 Should the Bill be passed?	2
<b>2 Background to the Bill</b>	<b>3</b>
2.1 Current arrangements	3
2.2 Jurisdictional implementation of the national scheme	3
<b>3 Examination of the Bill</b>	<b>5</b>
3.1 Application and administration	5
3.1.1 Estimated cost for implementation	6
3.1.2 Stakeholder views	6
3.2 Registration of interstate sentences in Queensland	6
3.2.1 Request for transfer of interstate sentence	6
3.2.2 Registration criteria	7
3.2.3 Decision process and preconditions to transfer	7
3.2.4 Effect of registration	8
3.2.5 Stakeholder views and department response	8
3.3 Registration of local sentences in interstate jurisdictions	11
3.3.1 Request for transfer of local sentence	11
3.3.2 Effect of interstate registration	11
3.3.3 Stakeholder view and department response	12
3.4 Reciprocal arrangements to issue travel permits	12
3.4.1 Administration of local and interstate sentences	12
3.4.2 Interstate travel permit	12
3.4.3 Stakeholder view and department response	13
<b>4 Compliance with the <i>Legislative Standards Act 1992</i></b>	<b>14</b>
4.1 Fundamental legislative principles	14
4.1.1 Rights and liberties of individuals	14
4.1.2 Administrative power	15
4.1.3 Natural justice	15
4.1.4 Institution of Parliament	16
4.2 Explanatory notes	17
<b>Appendix A – Submitters</b>	<b>18</b>
<b>Appendix B – Officials at public departmental briefing</b>	<b>19</b>
<b>Appendix C – Witnesses at public hearing</b>	<b>20</b>

## Abbreviations

ATSILS	Aboriginal and Torres Strait Islander Legal Service (Qld) Ltd
Bill	Community Based Sentences (Interstate Transfer) Bill 2019
committee	Legal Affairs and Community Safety Committee
FLPs	fundamental legislative principles
IOMS	Integrated Offender Management System
JRA	<i>Judicial Review Act 1991</i>
LSA	<i>Legislative Standards Act 1992</i>
OQPC Notebook	Office of the Queensland Parliamentary Counsel, <i>Fundamental Legislative Principles: The OQPC Notebook</i>
POQA	<i>Parliament of Queensland Act 2001</i>
QCS	Queensland Corrective Services
QLS	Queensland Law Society
Sisters Inside	Sisters Inside Inc

## Chair's foreword

This report presents a summary of the Legal Affairs and Community Safety Committee's examination of the Community Based Sentences (Interstate Transfer) Bill 2019.

The committee's task was to consider the policy to be achieved by the legislation and the application of fundamental legislative principles – that is, to consider whether the Bill has sufficient regard to the rights and liberties of individuals, and to the institution of Parliament.

On behalf of the committee, I thank those individuals and organisations who made written submissions on the Bill and gave evidence at the hearing. I also thank our Parliamentary Service staff and Queensland Corrective Services.

I commend this report to the House.



Peter Russo MP

Chair

## Recommendation

### Recommendation

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The committee recommends the Community Based Sentences (Interstate Transfer) Bill 2019 be passed.

## 1 Introduction

### 1.1 Role of the committee

The Legal Affairs and Community Safety Committee (committee) is a portfolio committee of the Legislative Assembly which commenced on 15 February 2018 under the *Parliament of Queensland Act 2001* (POQA) and the Standing Rules and Orders of the Legislative Assembly.<sup>1</sup>

The committee's primary areas of responsibility are:

- Justice and Attorney-General
- Police and Corrective Services, and
- Fire and Emergency Services.

The POQA provides that a portfolio committee is responsible for examining each bill in its portfolio areas to consider:

- the policy to be given effect by the legislation
- the application of fundamental legislative principles.<sup>2</sup>

The Community Based Sentences (Interstate Transfer) Bill 2019 (Bill) was introduced into the Legislative Assembly and referred to the committee on 21 August 2019. The committee is to report to the Legislative Assembly by 8 October 2019.

### 1.2 Inquiry process

On 26 August 2019, the committee invited stakeholders and subscribers to make written submissions on the Bill. Four submissions were received. See Appendix A for the list of submitters.

The committee received a public briefing about the Bill from Queensland Corrective Services (QCS) on 30 August 2019. See Appendix B for a list of officials.

The committee held a public hearing on 16 September 2019. See Appendix C for a list of witnesses.

The committee received written advice from QCS in response to matters raised in submissions.

The submissions, correspondence from the department and transcripts of the briefing and hearing are available on the committee's webpage.

### 1.3 Policy objectives of the Bill

The objectives of the Bill are to establish Queensland's participation in a national scheme for the formal transfer, registration and enforcement of community based sentences between Australian jurisdictions.<sup>3</sup>

### 1.4 Government consultation on the Bill

As set out in the explanatory notes, a consultation draft of the Bill was provided to the following key stakeholders and they were invited to provide feedback: Magistrates Court of Queensland; District Court of Queensland; Supreme Court of Queensland; Court of Appeal; the Director of Public Prosecutions; Queensland Law Society (QLS); Bar Association of Queensland; Legal Aid Queensland; Aboriginal and Torres Strait Islander Legal Service (ATSILS); Prisoners' Legal Service; Women's Legal Service Queensland; Queensland Indigenous Family Violence Legal Service; Aboriginal and Torres Strait

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<sup>1</sup> *Parliament of Queensland Act 2001*, s 88 and Standing Order 194.

<sup>2</sup> *Parliament of Queensland Act 2001*, s 93(1).

<sup>3</sup> Explanatory notes, pp 2-3.

Islander Women’s Legal Services NQ Inc; Sisters Inside Inc (Sisters Inside); Bravehearts; Protect All Children Today Queensland; and the Queensland Council for Civil Liberties.<sup>4</sup>

The explanatory notes state that feedback from stakeholders was taken into account in finalising the Bill.<sup>5</sup>

### **1.5 Should the Bill be passed?**

Standing Order 132(1) requires the committee to determine whether or not to recommend that the Bill be passed.

**Recommendation**

The committee recommends the Community Based Sentences (Interstate Transfer) Bill 2019 be passed.

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<sup>4</sup> Explanatory notes, p 3.

<sup>5</sup> Explanatory notes, p 3.

## 2 Background to the Bill

This section provides background to the introduction of the Bill and an overview of the current reciprocal arrangements between jurisdictions in relation to community service orders.

### 2.1 Current arrangements

In Queensland, community based sentences include probation, community service orders, graffiti removal orders, intensive correction orders, and drug and alcohol treatment orders. For the majority of these orders, depending on specific conditions imposed, there are comparable community based sentences in other jurisdictions across Australia.<sup>6</sup>

Currently, informal arrangements are in place between Queensland and other jurisdictions to supervise offenders on community based sentences when they travel or move interstate.<sup>7</sup> ATSIILS noted that presently the circumstances under which the administration of community based orders can be transferred between states is 'extremely limited', and relies upon the exercise of provisions in the *Penalties and Sentences Act 1992*, and informal arrangements being made between QCS and their state and territory equivalents.<sup>8</sup>

The Bill intends to address a number of issues identified with the current informal approach. According to the explanatory notes, without participation in the national scheme there are no powers to initiate breach action where an offender is not abiding by the conditions of their sentence. Currently, the responsibility to manage the sentence resides with the originating jurisdiction.<sup>9</sup>

Under the informal arrangements, Queensland manages approximately 87 interstate community based offenders. These offenders are predominantly from New South Wales. Other states and territories manage approximately 147 Queensland offenders.<sup>10</sup>

### 2.2 Jurisdictional implementation of the national scheme

During the 2003 Corrective Services Ministers' Conference, agreement was made to implement a nationally consistent legislative scheme to facilitate the transfer of community based sentences between jurisdictions. Ministers approved the development of model legislation, with any necessary local variations, to implement an agreed national policy to give statutory support to the supervision and monitoring of community based offenders as they move and travel around Australia, including the capacity to deal with offenders who breach the conditions of their orders. In 2011 the model legislation was endorsed by the former Standing Committee on Law and Justice, now known as the Council of Attorneys-General.<sup>11</sup>

All jurisdictions, with the exception of Queensland and the Northern Territory, have implemented the model legislation. Western Australia and Tasmania enacted the legislation in 2009, Victoria in 2013 and South Australia in 2015.<sup>12</sup> For each jurisdiction the relevant legislation is provided below:

- South Australia - *Community Based Sentences (Interstate Transfer) Act 2015*
- Victoria - *Community Based Sentences (Transfer) Act 2012*

<sup>6</sup> QCS, correspondence dated 28 August 2019, p 1.

<sup>7</sup> QCS, correspondence dated 28 August 2019, p 2.

<sup>8</sup> Submission 4, p 2.

<sup>9</sup> Explanatory notes, p 1.

<sup>10</sup> QCS, public briefing transcript, Brisbane, 30 August 2019, p 2.

<sup>11</sup> QCS, public briefing transcript, Brisbane, 30 August 2019, p 1.

<sup>12</sup> QCS, public briefing transcript, Brisbane, 30 August 2019, p 2.

- Western Australia - *Sentence Administration (Interstate Transfer of Community Based Sentences) Act 2009*
- Tasmania - *Interstate Transfer (Community-based Sentences) Act 2009*
- Australian Capital Territory - *Crimes (Sentence Administration) Act 2005* (Chapter 12), and
- New South Wales - *Crimes (Interstate Transfer of Community Based Sentences) Act 2004*.

As at 28 August 2019, only New South Wales and Tasmania have implemented the travel permit provisions in their legislation.<sup>13</sup>

The QCS advised the committee that there is not expected to be ‘any significant increase’ under the proposed legislation of offenders either seeking a transfer into Queensland or seeking a transfer out of Queensland.<sup>14</sup> The QCS also advised that, if passed, the Bill will allow local authorities, ‘in all cases to reserve the right to refuse a transfer in [to Queensland], even if a person may be otherwise eligible on all other criteria’.<sup>15</sup>

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<sup>13</sup> QCS, correspondence dated 28 August 2019, p 2.

<sup>14</sup> Public briefing transcript, Brisbane, 30 August 2019, p 4.

<sup>15</sup> Public briefing transcript, Brisbane, 30 August 2019, p 4.

### 3 Examination of the Bill

This section discusses issues raised during the committee’s examination of the Bill.

The Bill provides for Queensland’s participation in the national scheme.<sup>16</sup> The Bill proposes to create new legislation in Queensland to implement the nationally agreed legislative framework facilitating the transfer of community based sentences across Australia, in accordance with model legislation.<sup>17</sup>

The national framework for the transfer of community based sentences requires all three parties—the offender, the local jurisdiction and the interstate jurisdiction—to agree to the transfer of a community based sentence from one jurisdiction to another.<sup>18</sup>

#### 3.1 Application and administration

The Bill proposes that the national scheme will apply only to adults on community based sentences. The community based sentences available in Queensland that may be transferred under the scheme are:

- probation orders
- community services orders
- graffiti removal orders
- intensive correction orders, and
- drug and alcohol treatment orders.<sup>19</sup>

The Bill does not apply to juvenile offenders, offenders on parole or offenders with a sentence that imposes a fine or financial penalty, or includes reparation to a particular person, for example, a victim of crime.<sup>20</sup>

The Bill would establish that in Queensland the local authority is the chief executive of the department that administers the scheme, that is, the Commissioner, QCS.<sup>21</sup> The Bill would also establish the ‘interstate authority’ as the local authority in each of the other Australian jurisdictions, under the corresponding law of the jurisdiction.<sup>22</sup> The Bill would enable the Commissioner to delegate functions of the Bill to an appropriately qualified person and for sub-delegation to another appropriately qualified person.<sup>23</sup>

The QCS has an established database, the Integrated Offender Management System (IOMS), for registering and managing people on community based orders. The IOMS manages the current informal transfer arrangements with other jurisdictions. The QCS advised the committee that there was no need to establish a new database for the implementation of the national scheme as proposed by the Bill.<sup>24</sup>

As regards the likely timeframe for the registration process, the QCS advised:

*... Of course, it is in everyone's interest for these decisions to be made as expeditiously as possible, but it is a case-by-case scenario. For example, either party may request additional information*

<sup>16</sup> Explanatory notes, p 2.

<sup>17</sup> Explanatory notes, p 2.

<sup>18</sup> Explanatory notes, p 3.

<sup>19</sup> Proposed schedule 1; explanatory notes, p 2.

<sup>20</sup> QCS, correspondence dated 28 August 2019, p 2.

<sup>21</sup> Clause 6; QCS, correspondence dated 28 August 2019, p 3.

<sup>22</sup> Schedule 1.

<sup>23</sup> Clause 7.

<sup>24</sup> Public briefing transcript, Brisbane, 30 August 2019, p 4.

*prior to formally considering the request, and depending on the level of detail required that information might take some time. Our understanding is that at a maximum a transfer process would take around three months, but ... that is a maximum and they may be completed considerably more quickly than that. It is a case-by-case process and it does depend on the nature of the offender and their risks and needs. ...*<sup>25</sup>

### **3.1.1 Estimated cost for implementation**

The explanatory notes to the Bill state that there are no anticipated costs to government in implementing the Bill.<sup>26</sup>

QCS informed the committee that all costs involved with an offender moving interstate, including travel costs, will be incurred by the offender.<sup>27</sup>

### **3.1.2 Stakeholder views**

A number of submissions to the Bill were favourable of the Bill's proposed objectives.<sup>28</sup> For example, ATSIILS stated:

*There are a plethora of reasons why it is appropriate and desirable, both for the person serving the order and the aims of rehabilitation and the reduction of likelihood of further offending, to enable the interstate transfer of community based orders. These include facilitating access to family and community support, access to jobs and educational and training programs.*<sup>29</sup>

In other general observations, the QLS expressed support for the Bill to allow for some flexibility in the exercise of sentencing discretion, given there are situations where a court cannot exercise full discretion over appropriate sentences due to community based orders that cannot be transferred interstate.<sup>30</sup>

Mr Robert Heron suggested an annual report be generated to reflect and monitor the success and compliance of the program, in order to ensure the legislation 'is in the best interests of community members.'<sup>31</sup>

## **3.2 Registration of interstate sentences in Queensland**

Part 3 of the Bill outlines the administration of the registration of interstate sentences in Queensland when requested by an interstate authority.

### **3.2.1 Request for transfer of interstate sentence**

The Bill prescribes the form in which the interstate jurisdiction must present a request for registration of a community based sentence in Queensland: the request must be made in writing and state the offender's name, date of birth, last known address and any other details required by the QCS. The request may be accompanied by documentation to support the request.<sup>32</sup> The local authority may request additional information concerning the offender or the sentence.<sup>33</sup>

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<sup>25</sup> Public briefing transcript, Brisbane, 30 August 2019, p 4.

<sup>26</sup> Explanatory notes, p 2.

<sup>27</sup> QCS, correspondence dated 28 August 2019, p 5.

<sup>28</sup> See for example, submissions 1, 2 and 4.

<sup>29</sup> Submission 4, p 2.

<sup>30</sup> Submission 3, p 1.

<sup>31</sup> Submission 1, pp 1-2.

<sup>32</sup> Clause 10; explanatory notes, p 5.

<sup>33</sup> Clause 11; explanatory notes, p 6.

The offender may withdraw their consent to the transfer at any time before the community based sentence is registered interstate.<sup>34</sup>

### **3.2.2 Registration criteria**

The Bill defines registration criteria required for a sentence to be registered under the scheme. The criteria at proposed s 13(1) are:

- a) the offender has consented to the interstate sentence being registered in Queensland and has not withdrawn the consent
- b) there is a corresponding community based sentence under the law of Queensland
- c) the offender is capable of complying with the interstate sentence in Queensland, and
- d) the interstate sentence is capable of being safely, efficiently and effectively administered in Queensland.<sup>35</sup>

The explanatory notes state there are factors that may be considered by the local authority under proposed subsection 13(1)(d), for example, whether it is administratively inefficient to transfer the sentence due to a short period of supervision remaining on the sentence; or the effect of the transfer upon individuals other than the offender, such as a victim of their crime.<sup>36</sup>

### **3.2.3 Decision process and preconditions to transfer**

Upon receiving a request for transfer, the Bill specifies the decisions available to the local authority:

- register the sentence
- require the offender to meet certain preconditions before registering the sentence, or
- decline to register the interstate sentence.<sup>37</sup>

Proposed s 14(2) would require the local authority to have regard to the registration criteria under proposed s 13. The local authority may have regard to any matter prescribed by regulation and any other matter the authority considers relevant.

The Bill would enable the local authority to decide not to register the interstate sentence even if all the registration criteria are satisfied. The local authority must not register the interstate sentence unless satisfied that the registration criteria are met. The local authority may decide whether to register the interstate sentence, or impose any preconditions, based on the information and documents available to the authority, without hearing from the offender.<sup>38</sup>

If a local authority decides not to register the interstate sentence the authority must give written notice of the decision to the offender and the interstate authority.<sup>39</sup>

Under the Bill, the local authority may impose preconditions for the registration of the interstate sentence that the offender must meet to show that the offender can comply, and is willing to comply, with the sentence in Queensland including:

- a) that the offender must satisfy the local authority before a stated day that the offender is living in Queensland

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<sup>34</sup> Clause 12; explanatory notes, p 6.

<sup>35</sup> Clause 13(1).

<sup>36</sup> Explanatory notes, p 6.

<sup>37</sup> Clause 14(1); explanatory notes, p 6.

<sup>38</sup> Clause 14(4); explanatory notes, p 6.

<sup>39</sup> Clause 14(6).

- b) that the offender must report to a stated person in Queensland at a stated day and place or another day and place agreed between the local authority and the offender.

The Bill would enable the local authority to amend or revoke a precondition by written notice to the offender and the interstate authority.<sup>40</sup>

### 3.2.4 Effect of registration

Proposed s 18 of the Bill outlines the effect of registration of an interstate community based sentence in Queensland, including the administration of the sentence and how a breach before or after the registration of a sentence should be dealt with.<sup>41</sup>

The Bill proposes that, if the interstate sentence is registered in Queensland under the scheme, certain provisions apply, including:

- the sentence becomes a local sentence and ceases to be an interstate sentence
- the sentence is taken to have been validly imposed by a court of Queensland with appropriate jurisdiction, and
- the offender may be dealt with in Queensland for a breach of the sentence, whether the breach happened before, or happens after, the registration of the sentence.<sup>42</sup>

However, proposed subsections 18(1)(e) and 18(3) intend that, for the purpose of determining the penalty to be imposed for resentencing the offence, the penalty is taken to be the penalty imposed under the law of the originating jurisdiction and not under the law of Queensland.<sup>43</sup>

Proposed subsection 18(4) provides that registration does not affect any right, including the offender's right, to seek an appeal or review of the conviction, finding of guilt or imposition of a sentence in the originating jurisdiction. Proposed subsection 18(6) intends that registration does not give any right to the offender to an appeal or review in Queensland.<sup>44</sup>

### 3.2.5 Stakeholder views and department response

Sisters Inside expressed concern that, under proposed s 14, there is no given time period for the local authority to decide the request to transfer a community based sentence.<sup>45</sup> Acknowledging that this is not part of the national model legislation, Sisters Inside nonetheless stated that a timeframe is important as 'it provides accountability and may assist the local authority in decision making and planning'.<sup>46</sup> Sisters Inside proposed a 21-day timeframe, noting that 'extended delays may affect the ability for a person to retain job and study opportunities and housing in another jurisdiction'.<sup>47</sup>

At the public hearing, QLS noted that other stakeholders had raised that there was not a timeframe for a decision by QCS and not necessarily the obligation to provide written reasons as to why QCS has rejected an application. The QLS continued:

*... That may cause a little bit of frustration in terms of starting that appeal process, because if Corrective Services does not make a decision then it does not tick over to the next part of the process necessarily. It would be an interesting thing to see prisoners and offenders in other jurisdictions having to apply to the Supreme Court of Queensland for an order to encourage*

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<sup>40</sup> Clause 15(4).

<sup>41</sup> Explanatory notes, p 7.

<sup>42</sup> Clause 18(1).

<sup>43</sup> Explanatory notes, pp 7-8.

<sup>44</sup> Explanatory notes, p 8.

<sup>45</sup> Submission 2, p 1.

<sup>46</sup> Submission 2, p 2.

<sup>47</sup> Submission 2, p 2.

*Corrective Services to make a decision one way or the other and then go on with the process. There is a little bit of fiddliness around that.*<sup>48</sup>

In response to Sisters Inside's submission regarding timeframes, QCS noted that it is 'in the best interest of all parties for transfer requests to be considered in a timely manner'.<sup>49</sup> The QCS stated: 'Requests for transfer will be considered on a case-by-case basis in accordance with the legislative framework. Some requests may be more complex, requiring further information and detail prior to consideration'.<sup>50</sup> The QCS also noted that, 'without reciprocal arrangements agreed and implemented in other jurisdictions' legislation the imposition of a timeframe would be difficult to enforce'.<sup>51</sup>

At the public hearing, Sisters Inside proposed that 'when a Queensland resident is requesting a transfer of a community based sentence to another state or jurisdiction, the local authority in Queensland has 48 hours to provide a request over to the interstate receiving authority'.<sup>52</sup> Sisters Inside acknowledged that 'the imposition of a time frame may be difficult to enforce in another jurisdiction'<sup>53</sup> but added that 'it would be of great benefit for Queensland to enforce a time frame of any community based request going out of Queensland and making a decision on any request coming into Queensland'.<sup>54</sup>

The QLS noted proposed s 13 of the Bill and the transfer of a 'corresponding community based sentence', and queried how this section will operate in jurisdictions where Probation Orders, Community Services Orders and Intensive Correction Orders have been abolished in favour of a Community Correction Order.<sup>55</sup>

The QCS noted the concerns of the QLS on this matter and stated that '(t)he legislation is designed with sufficient flexibility to allow for any changes in jurisdictions' community based order regimes'.<sup>56</sup> The QCS further stated:

*To ensure effective implementation of the national scheme both now and into the future, the legislation defines a corresponding community based sentence as (refer to section 13):*

- *a sentence under law that corresponds, or substantially corresponds because a penalty and conditions of substantially the same nature can be imposed, or*
- *is a community based sentence under law declared by regulation to correspond, whether or not the sentence corresponds, or substantially corresponds, to the interstate sentence.*<sup>57</sup>

QLS also expressed concern over the consequences of the arrangement upon any special conditions that are attached to Queensland, for example, a requirement to undertake psychiatric or psychological counselling.<sup>58</sup>

On conditions attachable to the transferred order, the QCS stated in response:

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<sup>48</sup> Public hearing transcript, Brisbane, 16 September 2019, p 3.

<sup>49</sup> QCS, correspondence dated 13 September 2019, attachment 1, p 2.

<sup>50</sup> QCS, correspondence dated 13 September 2019, attachment 1, p 2.

<sup>51</sup> QCS, correspondence dated 13 September 2019, attachment 1, p 2.

<sup>52</sup> Public hearing transcript, Brisbane, 16 September 2019, p 6.

<sup>53</sup> Public hearing transcript, Brisbane, 16 September 2019, p 6.

<sup>54</sup> Public hearing transcript, Brisbane, 16 September 2019, p 6.

<sup>55</sup> Submission 3, p 2.

<sup>56</sup> QCS, correspondence dated 13 September 2019, attachment 1, p 4.

<sup>57</sup> QCS, correspondence dated 13 September 2019, attachment 1, p 5.

<sup>58</sup> Submission 3, p 2.

*The registration criteria in the legislation requires there to be a corresponding community based sentence prior to approval for transfer being provided (refer to section 13). This includes a need to have:*

- *conditions of substantially the same nature as the conditions to which the interstate sentence is subject can be imposed in relation to the community based sentence.*

*This requirement is universal across existing legislation passed by states to facilitate the national scheme.*<sup>59</sup>

Sisters Inside acknowledged the need for the registration criteria proposed under proposed subsection 13(1) but expressed concerns over the 'discretionary nature of the decision making process'.<sup>60</sup> Sisters Inside stated:

*... As Mr Tom Humphreys said in the public hearing on 30 August 2019, it would be up to the delegate to decide whether it is in the state's best interests to accept a person who is subject to an interstate community based sentence. We would like to know who decides what 'best interests' are. The determination of best interests can be vastly different, depending on who is making the decision at the time. This is already clear with the foremost example provided by Corrective Services where they believe it is not in the best interests to transfer someone with a history of not complying with directions. Perhaps a transfer is exactly what is needed to be able to comply. Perhaps the reasons for noncompliance previously are historic. Perhaps the noncompliance is rationalised by personal or specific circumstances or carries little relevance in the reason someone may wish to transfer their sentence to another jurisdiction.*<sup>61</sup>

Sisters Inside recommended that Ministerial guidelines be developed to assist the local authority to make decisions that are fair, unbiased and consistent. A set of guidelines, according to Sisters Inside, would be 'essential to ensure that people are receiving similar decisions irrespective of where the authority is located'.<sup>62</sup>

Mr Robert Heron commented on the Bill's discretionary provisions in relation to the basis for law enforcement officers' decision to register an interstate sentence:

*... it should be positively stated in the legislation on what basis law enforcement officers may discriminate upon the suitability of candidates for interstate transfers and travel permits regarding the nature of the crime and whether or not that decision may be determined to be final or whether it may be subject to unlimited appeal as provided in the current legislation.*<sup>63</sup>

Mr Heron further expanded on his comments by stating:

*While most community members would be happy to take in a jaywalker or a kid who got caught tagging, emotions will be hostile and volatile for aggravated and sexual offences.*<sup>64</sup>

Sisters Inside expressed concern over the lack of information provided to the applicant should the local authority decide not to register the interstate transfer, because there is no provision in the Bill for providing written reasons for the refusal, only a written notice. This prevents the applicant from responding to specific concerns regarding the refusal, which can affect their ability to appeal a decision

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<sup>59</sup> QCS, correspondence dated 13 September 2019, attachment 1, p 4.

<sup>60</sup> Submission 2, p 2.

<sup>61</sup> Public hearing transcript, Brisbane 16 September 2019, p 7.

<sup>62</sup> Submission 2, p 2.

<sup>63</sup> Submission 1, p 1.

<sup>64</sup> Submission 1, p 1.

successfully.<sup>65</sup> Accordingly, Sisters Inside suggested the term ‘written notice’ in proposed s 14(6) of the Bill, be amended to ‘written reasons’.<sup>66</sup>

In response to Mr Heron and Sisters Inside on issues surrounding the decision making process proposed by the Bill, QCS noted that the intent of the proposed scheme is to ‘to support flexibility in the administration of community based sentences, support offender rehabilitation and reintegration, and ensure community safety’.<sup>67</sup> The QCS stressed the discretionary element within the proposed scheme:

*A local jurisdiction may request an interstate jurisdiction to register the sentence, but is not compelled to do so. Likewise, an interstate jurisdiction cannot be compelled to accept the transfer of an offender’s sentence.*<sup>68</sup>

In terms of the appeal provisions within the Bill, Sisters Inside asserted that a process should be available to allow an appeal at a local level. This could be enabled by providing an opportunity to respond in writing to a decision at a local level before a final decision is made. The organisation also requested clarification in relation to whether the written notice is a final and operative decision for the purpose of the *Judicial Review Act 1991* (JRA).<sup>69</sup>

In response to Sisters Inside, the QCS confirmed that there is nothing in the Bill that precludes the application of the JRA to decisions made by the local authority in Queensland.<sup>70</sup>

### **3.3 Registration of local sentences in interstate jurisdictions**

Part 4 of the Bill would enable the Commissioner, as the local authority, to request an interstate authority to register a Queensland community based sentence in an interstate jurisdiction with an offender’s consent.<sup>71</sup>

#### **3.3.1 Request for transfer of local sentence**

Proposed s 20 provides that additional information may be provided to the interstate authority to assist, for example, with their consideration of the transfer request.<sup>72</sup>

#### **3.3.2 Effect of interstate registration**

Proposed s 21 outlines the effects of registration of a Queensland community based sentence in an interstate jurisdiction.

The Bill would not limit any right of appeal or review of the conviction, finding of guilt or sentence in Queensland, if Queensland is the originating jurisdiction. According to the explanatory notes, proposed s 21 could include, for example, an application for amendment or revocation of an order under Part 7, Division 1 of the *Penalties and Sentences Act 1992*.<sup>73</sup>

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<sup>65</sup> Submission 2, p 2.

<sup>66</sup> Submission 2, p 2.

<sup>67</sup> QCS, correspondence dated 13 September 2019, attachment, p 3.

<sup>68</sup> QCS, correspondence dated 13 September 2019, attachment, p 3.

<sup>69</sup> Submission 2, p 2.

<sup>70</sup> QCS, correspondence dated 13 September 2019, attachment, p 3.

<sup>71</sup> Clause 19.

<sup>72</sup> Clause 20; explanatory notes, p 8.

<sup>73</sup> Clause 21; explanatory notes, p 8.

Additionally, proposed subsection 21(2)(b) would provide that proposed s 21 would not affect a sentence to the extent it imposes a fine or financial penalty, requires the making of reparation or imposes a period of detention or imprisonment.<sup>74</sup>

### **3.3.3 Stakeholder view and department response**

The QLS noted that proposed subsection 21(2) preserves the right of appeal or review in Queensland if it is the originating jurisdiction, and proposed subsection 21(4) confirms the ability to allow the originating Queensland order to be re-registered in Queensland. The QLS observed that the Bill appears to protect the interests of the offender who has been subject to a transferred order.<sup>75</sup>

### **3.4 Reciprocal arrangements to issue travel permits**

Part 5 of the Bill provides that the Minister may enter into arrangements with the corresponding Minister of an interstate jurisdiction to facilitate the administration within Queensland, and the interstate jurisdiction, of community based sentences for offenders travelling to, or residing in, Queensland or an interstate jurisdiction.<sup>76</sup>

This part of the Bill does not apply to offenders where their sentence has been registered interstate as a formal transfer under Part 3 or 4 of the Bill.<sup>77</sup>

#### **3.4.1 Administration of local and interstate sentences**

The Bill proposes arrangements for the issuing of interstate travel permits to local offenders. The proposed arrangements are designed to facilitate the administration of community based sentences for offenders temporarily travelling to Queensland or an interstate jurisdiction.<sup>78</sup>

#### **3.4.2 Interstate travel permit**

Proposed s 23 would authorise the Minister to enter into arrangements with a corresponding Minister for:

- the administration of interstate sentences in Queensland
- the administration of Queensland sentences interstate
- travel to an interstate jurisdiction by Queensland offenders, and
- travel to Queensland by interstate offenders.<sup>79</sup>

The Bill proposes to establish permission for a Queensland community based offender to leave Queensland in accordance with arrangements made under the provisions of proposed s 23.<sup>80</sup> The terms and conditions of the permit to be imposed are to be incorporated into the interstate travel permit.<sup>81</sup>

During any period in which an interstate travel permit is in force for a local offender and the local offender is present in that interstate jurisdiction, the Bill provides that the conditions of the interstate travel permit substitute for the conditions of the relevant local sentence. Any compliance or

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<sup>74</sup> Explanatory notes, p 8.

<sup>75</sup> Submission 3, p 1.

<sup>76</sup> QCS, correspondence dated 28 August 2019, p 5.

<sup>77</sup> Explanatory notes, p 9.

<sup>78</sup> QCS, correspondence dated 28 August 2019, p 2.

<sup>79</sup> Clause 23(1); explanatory notes, p 9.

<sup>80</sup> Clause 24; explanatory notes, p 9.

<sup>81</sup> Clause 24(3).

noncompliance by the local offender with the conditions of the interstate travel permit is taken to be compliance or noncompliance, as the case may be, with the conditions of the relevant local sentence.<sup>82</sup>

The Bill would empower the issuing of an arrest warrant for an interstate offender on a travel permit in Queensland if advised by the relevant interstate authority that the offender's interstate travel permit is no longer in force, or is satisfied that the offender has failed to comply with the conditions of the permit.<sup>83</sup> The arrest warrant would provide sufficient authority for a local law enforcement officer to arrest the interstate offender and then take relevant action as outlined in proposed subsection 26(3).

### **3.4.3 Stakeholder view and department response**

Mr Robert Heron was critical of proposed subsection 24(6), where an interstate travel permit ceases to have effect in an interstate jurisdiction if the offender is arrested under a warrant issued under the corresponding law of that jurisdiction, stating that the provision 'lacks proportionality, legal justification and is arbitrary'.<sup>84</sup>

In response, the QCS noted Mr Heron's concerns and stated:

*The ability for the Minister for Police and Minister for Corrective Services to enter into arrangements with Ministers of interstate jurisdictions to facilitate the administration of community based sentences for offenders temporarily travelling to Queensland or an interstate jurisdiction and not subject to formal transfer under the scheme ensures community safety.*

*This includes, but is not limited to, empowering the interstate authority to issue an arrest warrant if the offender fails to comply with the conditions of the travel permit or the offender's travel permit is no longer in force.*

*These provisions enable offenders to temporarily travel interstate, for example for short-term work, and return to their originating jurisdiction while ensuring any risk to the community for any noncompliance can be mitigated. It does not apply to offenders subject to formal transfer under the scheme.*

*The cessation of a travel permit does not necessarily result in breach action or imprisonment, but provides a mechanism for enforcement of the sentence to ensure community safety. This includes the ability for the interstate jurisdiction to deliver the offender to the jurisdiction in which the interstate travel permit was issued.<sup>85</sup>*

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<sup>82</sup> Clause 25(2).

<sup>83</sup> Clauses 24(6), 26.

<sup>84</sup> Submission 1, p 1.

<sup>85</sup> QCS, correspondence dated 13 September 2019, attachment, pp 5-6.

## 4 Compliance with the *Legislative Standards Act 1992*

### 4.1 Fundamental legislative principles

Section 4 of the *Legislative Standards Act 1992* (LSA) states that ‘fundamental legislative principles’ (FLPs) are the ‘principles relating to legislation that underlie a parliamentary democracy based on the rule of law’. The principles include that legislation has sufficient regard to:

- the rights and liberties of individuals, and
- the institution of Parliament.

The committee has examined the application of the FLPs to the Bill. The committee brings the following to the attention of the Legislative Assembly.

#### 4.1.1 Rights and liberties of individuals

Section 4(2)(a) of the LSA requires that legislation has sufficient regard to the rights and liberties of individuals.

Clause 10 of the Bill requires a local authority to consider a request for transfer of an interstate sentence. This request will include a significant amount of sensitive information about an offender, including their criminal record. The provision sets out the form of the request and requires certain documents to be included in the request, including:

- a copy of the interstate sentence certified by the interstate authority
- a copy of all pre-sentence reports about the offender held by the interstate jurisdiction for each offence committed by the offender
- a copy of all relevant psychological or other assessments of the offender held by the interstate authority
- a document of the details held by the interstate authority of the offender’s criminal record (in or outside Australia) and the offender’s compliance with the interstate sentence and any other non-custodial sentence.

Former committees have considered the reasonableness and fairness of treatment of individuals as relevant in deciding whether legislation has sufficient regard to rights and liberties of individuals.

#### *Privacy and confidentiality*

The right to privacy, the disclosure of private or confidential information and privacy and confidentiality issues have generally been identified by past committees as relevant to consideration of whether legislation has sufficient regard to individual rights and liberties.

#### Committee comment

A request for transfer to a local authority may include a number of documents that contain significant and sensitive information about an individual, including details of their criminal record. This is disclosed in the request from the interstate authority to the local authority. The explanatory notes do not provide any specific justification for this breach of privacy. However, the committee notes the request also must include a copy of the offender’s consent for the registration of the interstate sentence in Queensland.<sup>86</sup>

Given that the offender must request the transfer from the interstate authority and also consent to the registration of the interstate sentence, therefore being fully aware of the disclosure, the

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<sup>86</sup> Clause 10(2)(b).

committee is satisfied that the breach of fundamental legislative principle is justified in the circumstances.

#### 4.1.2 Administrative power

Section 4(3)(a) of the LSA provides whether legislation has sufficient regard to rights and liberties depends on whether, for example, the legislation makes rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Clause 14 of the Bill provides for the local authority's decision on request and allows the local authority to either:

- (a) register the interstate sentence
- (b) register the interstate sentence subject to preconditions, or
- (c) decline to register the interstate sentence.

Under clause 14(6), if the local authority decides not to register the interstate sentence, the authority must give written notice of the decision to the offender and the interstate authority.

Legislation should make rights and liberties, or obligations, dependent on administrative power only if subject to appropriate review. The Office of the Queensland Parliamentary Counsel's *Fundamental Legislative Principles: The OQPC Notebook* (OQPC Notebook) states:

*Depending on the seriousness of a decision and its consequences, it is generally inappropriate to provide for administrative decision-making in legislation without providing for a review process. If individual rights and liberties are in jeopardy, a merits-based review is the most appropriate type of review.*<sup>87</sup>

These provisions of the Bill allow the local authority to decline to register an interstate sentence. Notice of this decision is then provided. However, there is no provision for an informal or merits review of this decision.

#### Committee comment

The explanatory notes recognise this breach and provide the following justification:

*... the Bill has been developed based on model legislation that all Australian jurisdictions agreed to implement. Providing jurisdictions the flexibility to agree or decline the transfer of an offender on a community based order is in the interest of community safety and in the public interest. Additionally, there is nothing in the Bill that precludes the application of the Judicial Review Act 1991 to decisions made by the local authority.*<sup>88</sup>

The committee notes that although judicial review is available, there is no informal or merits review. It further notes, however, that the national framework for the transfer of community based sentences requires all three parties—the offender, the local jurisdiction and the interstate jurisdiction—to agree to the transfer of a community based sentence from one jurisdiction to another.

#### 4.1.3 Natural justice

Section 4(3)(b) of the LSA provides that legislation should be consistent with the principles of natural justice, developed by the common law.

Clause 14 of the Bill provides that the local authority may decline to register an interstate sentence and, if declining to register, must give written notice of the decision to the offender and the interstate authority.

<sup>87</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 18.

<sup>88</sup> Explanatory notes, p 3.

The OQPC Notebook states that legislation should be consistent with the principles of natural justice which are developed by the common law and incorporate the following three principles:

1. something should not be done to a person that will deprive them of some right, interest, or legitimate expectation of a benefit without the person being given an adequate opportunity to present their case to the decision-maker
2. the decision maker must be unbiased, and
3. procedural fairness should be afforded to the person, meaning fair procedures that are appropriate and adapted to the circumstances of the particular case.<sup>89</sup>

#### Committee comment

The committee notes that when an unfavourable decision is made by the local authority, a notice of an unfavourable decision is provided to the offender and the interstate authority. However, it is unclear whether the reasons for this decision are to be provided. The non-provision of the reasons for the decision could be seen to be a failure to provide for an individual's rights to natural justice. An individual might feel aggrieved that they do not receive reasons for an unfavourable decision and also do not have any review rights.

The committee seeks further clarification from the Minister as to whether the reasons for an unfavourable decision on a request for registration would be provided to the offender by QCS.

#### **4.1.4 Institution of Parliament**

Section 4(2)(b) of the LSA requires legislation to have sufficient regard to the institution of Parliament.

Clause 13 of the Bill sets out the registration criteria for an interstate sentence. One of the criteria, at cl 13(1)(b), provides that there must be a corresponding community based sentence under the law of Queensland.

Clause 13(2)(b) provides that there is a corresponding community based sentence if, under the law of Queensland, it is declared by regulation to correspond to the interstate sentence.

Section 4(4)(a) of the LSA provides that a Bill should allow the delegation of legislative power only in appropriate cases and to appropriate persons. As noted in the OQPC Notebook, this matter is concerned with the level at which delegated legislative power is used.<sup>90</sup>

#### Committee comment

By declaring in regulation that an interstate sentence corresponds with a community based sentence under the law of Queensland, it could be argued that the legislation does not have sufficient regard to the institution of Parliament.

The explanatory notes provide the following justification:

*... it is considered that the provision is justified through clarity in the legislation as to what types of community based sentences and associated penalties may apply, thus limiting what the regulation can prescribe. Further, this provision is considered necessary to ensure workability of the legislation and realise the overall intent of the national scheme.<sup>91</sup>*

The explanatory notes further provide:

*The inclusion of subclause (2) supports the workability of the legislation and the overall intent of the national scheme. It recognises that where a community based sentence is able to be*

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<sup>89</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 25.

<sup>90</sup> Office of the Queensland Parliamentary Counsel, *Fundamental Legislative Principles: The OQPC Notebook*, p 145.

<sup>91</sup> Explanatory notes, p 3.

*managed by an interstate jurisdiction, the difference in sentence structure or name of the sentence structure or name of the sentence should not in itself be a barrier to transfer.*<sup>92</sup>

The committee is satisfied that clause 13 of the Bill has sufficient regard to the institution of Parliament.

#### **4.2 Explanatory notes**

Part 4 of the LSA relates to explanatory notes. It requires that an explanatory note be circulated when a Bill is introduced into the Legislative Assembly, and sets out the information an explanatory note should contain.

Explanatory notes were tabled with the introduction of the Bill. The committee notes they are fairly detailed and contain the information required by Part 4 and a reasonable level of background information and commentary to facilitate understanding of the Bill's aims and origins.

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<sup>92</sup> Explanatory notes, p 6.

## Appendix A – Submitters

<b>Sub #</b>	<b>Submitter</b>
001	Robert Heron
002	Sisters Inside
003	Queensland Law Society
004	Aboriginal & Torres Strait Islander Legal Service (QLD) Ltd

## **Appendix B – Officials at public departmental briefing**

### **Queensland Corrective Services**

- Tom Humphreys, General Manager, Strategy and Governance
- Sarah Hyde, General Manager, Community Corrections
- Rhiannon Porter, Director, Operations, Community Corrections
- Annika Hutchins, Manager, Policy and Legislation, Strategy and Governance

## **Appendix C – Witnesses at public hearing**

### **Queensland Law Society**

- Binny De Saram, Legal Policy Manager
- Matt Dunn, General Manager, Policy, Public Affairs and Governance

### **Aboriginal and Torres Strait Islander Legal Service**

- Kate Greenwood, Barrister, Policy, Early Intervention and Community Legal Education Officer

### **Sisters Inside**

- Debbie Kilroy, Chief Executive Officer
- Katherine (Katie) McHenry, Policy Officer

### **Private Capacity**

- Robert Heron